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ABSTRACT

This report contains tentative procedural recommendations for the discipline of officers of instruction and certain other holders of faculty appointments at Harvard University. These procedures will apply under the following conditions: (1) interference with freedom of speech, academic freedom, freedom from personal force and violence, and freedom of movement; (2) interference with members of the University in performance of their normal duties and activities; (3) theft or destruction of University property, or the property of its members; or (4) in other cases involving grave misconduct or neglect of duty. The procedures provide for a Screening Committee, a Hearing Committee, and the final decisionmaking by the President and Harvard Fellows. The discussion that follows the listing of the procedures reviews the composition, designation, and procedures of the Committees. (AF)

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THE UNIVERSITY COMMITTEE ON GOVERNANCE
HARVARD UNIVERSITY

Tentative Recommendations Concerning Discipline of Officers

CAMBRIDGE, MASSACHUSETTS
MARCH 1971

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION
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This Report contains tentative recommendations for procedures for the discipline of officers of instruction and certain other holders of corporation appointments at Harvard University. These recommendations reflect comments received subsequent to the initial publication of tentative recommendations in April, 1970 and extensive discussions at numerous plenary sessions of the Committee on Governance. The Committee has adopted the revised recommendations for publication and distribution to the Harvard community and others who may be interested.

The Committee plans to submit final recommendations to the President and Governing Boards prior to the end of this academic year. Before doing so, the Committee needs to receive comments and suggestions from readers of the Report. In particular, because of the nature of the subject matter of the Report, the Committee considers it important that each of the Faculties at Harvard review the Report and transmit to the Committee its opinions concerning the tentative recommendations. The nature of the review, whether it be, for example, by the full Faculty or by a committee, and the form in which comments are sent may vary from Faculty to Faculty. It is important that each Faculty forward its comments to the Committee so that its final recommendations will reflect as fairly as possible the views of those segments of the Harvard community most directly affected by the recommendations. Should any Faculty or other group so desire, the Committee will be happy to provide a representative to explain the background and evolution of the recommendations and answer any questions.

In order to meet the proposed timetable, the Committee would appreciate receiving all comments by May 1st. The Committee's office is in Wadsworth House, Cambridge, Massachusetts 02138.

JOHN T. DUNLOP
Chairman

THE UNIVERSITY COMMITTEE ON GOVERNANCE
HARVARD UNIVERSITY

Tentative Recommendations Concerning Discipline of Officers

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Discipline of Officers

A. Tentative Recommendations

1. The procedures outlined below shall apply to the discipline of officers of instruction holding Corporation appointments in any Faculty, in cases involving violations of the third paragraph of the University-wide Statement on Rights and Responsibilities,* and in other cases involving grave misconduct or neglect of duty arising under the Third Statute of the University.** The procedures shall also apply to the discipline of other holders of Corporation appointments (including administrative officers) who are members of a Faculty, in cases involving violations of the third paragraph of the Statement, and in other cases involving grave misconduct arising under the Third Statute of the University.

2. If a complaint is made against any such person, a Screening Committee shall inquire into the case. That Committee may also attempt to assist in the settlement of the case by mutual agreement. If the case is not so settled, the Committee shall make recommendations whether further action is warranted. A copy of such recommendations shall be furnished to the person complained against (hereinafter called the "Respondent").

3. The composition and size of the Screening Committee, the method of its selection, and the working out of appropriate complaint and other procedures for it, shall be left to the individual Faculties, provided that the plan adopted by a Faculty for the composition of its Screening Committee shall be subject to the approval of the Governing Boards.

4. If the Screening Committee's conclusion is that further action is warranted, or in any event if the President should decide that it is advisable to have the case further considered, a Hearing Committee shall hold hearings in the case.

5. The Hearing Committee shall consist of four members of the Faculty involved and three members of other Faculties of the University; provided that, under guidelines to be worked out by the Faculty members of the University Committee on Rights and

* The Statement on Rights and Responsibilities is set out in Appendix 1.
** The relevant portions of the Third Statute are set out in Appendix 2.

Responsibilities, where the size of a Faculty is so small that it may be inappropriate for four members to sit on such a committee, the Hearing Committee shall consist of three members of the Faculty involved and four members of other Faculties of the University.

6. Each Faculty shall have the authority, either in advance or for a particular case, to increase the proportion of outside Faculty to home Faculty on the Hearing Committee hearing the case of a member of that Faculty, including the authority to determine that the case shall be heard by a Committee consisting entirely of outside Faculty.

7. If the Respondent has tenure, all members of the Hearing Committee shall be tenured members of the Faculties. If the Respondent does not have tenure, two members of the Committee shall be Faculty members without tenure.

8. The designation of a Hearing Committee for a particular case shall be as follows:

(a) Each Faculty shall, at such intervals as it deems appropriate, elect five tenured members and two untenured members to serve as part of a pool of Faculty members available for such duty. The method of election shall be left to the individual Faculties.

(b) The Faculty members of the University Committee on Rights and Responsibilities shall designate the Hearing Committee for a particular case from this pool, in accordance with rules of lot or rotation worked out by them, subject to the provisions of paragraphs 5, 6 and 7.

(c) The Faculty members of the University Committee on Rights and Responsibilities shall also be charged with designating replacements for Hearing Committee members who are unable to serve.

9. No Faculty member who served on the Screening Committee for a particular case may serve on the Hearing Committee for that case.

10. The Hearing Committee shall conduct hearings, make findings of fact, and make recommendations to the President and Fellows on what, if any, action is appropriate. Copies of all findings and recommendations shall be furnished to the Respondent.

11. The Hearing Committee shall be free to invite the Fellows of Harvard College to designate two Fellows to attend the hearings and participate in its deliberations without vote. It is expected that ordinarily the Committee will issue such an invitation; but in any particular case the Committee may determine that such attendance or participation would under the circumstances be undesirable or unnecessary. If the Committee so determines it shall take other steps to assure that the President and Fellows will have the fullest possible appreciation of the issues and the evidence.

12. The Hearing Committee may invite other non-voting observers to attend its sessions.

13. The Faculty members of the University Committee on Rights and Responsibilities shall be charged with working out procedures to be followed by Hearing Committees. These procedures shall assure the Respondent a full hearing and fair representation before an impartial tribunal.

14. Upon receiving the recommendations of the Hearing Committee, the President and Fellows shall, before acting on the case, allow the Respondent a reasonable opportunity to submit such further arguments as he may deem fit.

15. If the President and Fellows are not disposed to accept the recommendations of the Hearing Committee, they shall transmit their findings in detail to that Committee, which shall then review the case and make such further recommendations to the President and Fellows as it deems appropriate. Copies of all such findings and recommendations shall be furnished to the Respondent.

16. In any case where the Respondent is a student and also holds a Corporation appointment specified in paragraph 1, above, the question of his status as a student shall first be determined, in accordance with the procedures governing the discipline of students in his School. If such a proceeding leads to the termination of his status as a student, and if his Corporation appointment is conditioned on his being a student (e.g., certain teaching fellows), that appointment will automaticall terminate. If a separate proceeding is appropriate to determine whether such person should retain his Corporation appointment, the procedures speci-

fied in these recommendations shall be followed.* Any board or committee charged with the findings of fact in any such case may, if the Respondent agrees, adopt findings of fact already made by any other duly constituted board or committee which has considered the case.

17. If a Respondent is a member of more than one Faculty, his "home" Faculty for the purpose of these procedures shall be the Faculty where his principal activities are centered. In case the matter is in dispute, the Faculty members of the University Committee on Rights and Responsibilities shall resolve it.

18. None of the foregoing shall prevent the working out, with the consent of interested parties, of *ad hoc* or informal procedures to be followed in individual cases.

B. Discussion

The Third Statute of the University defines under what circumstances officers holding Corporation appointments may be removed: "All officers of instruction are subject to removal by the Corporation only for grave misconduct or neglect of duty. All other holders of Corporation appointments (including administrative officers) may be removed from such appointments by the Corporation for grave misconduct or whenever, in its opinion, their duties are not satisfactorily discharged."

On the other hand, neither the Statutes nor other provisions now establish any University-wide institutions or procedures for the removal or other discipline of Corporation appointees. It is the purpose of these recommendations to create a basic institutional structure and process for the discipline of University officers.

Coverage of the Provisions. Recommendation 1 defines the intended coverage of the provisions. We had no difficulty in reaching the conclusion that the procedures should operate whenever officers of instruction are charged with violating the third paragraph of the Statement on Rights and Responsibilities, or whenever it is proposed to discipline such officers for "grave

* Of course a decision allowing a student to remain a student may leave open for separate determination the question whether he should retain his Corporation appointment.

misconduct or neglect of duty". Further, it seems clear that if a person holds an appointment both as an officer of instruction and in another capacity (usually as an officer of administration), he should be protected by these procedures before he is removed from his position *qua* teacher. The more difficult question is whether these procedures must be used in a case where, for instance, an administrator, full or part time, is to be removed from his administrative functions. The Committee concluded that these procedures would not be appropriate for determining whether a person's duties are being "satisfactorily discharged" under the second sentence of the Third Statute. On the other hand, if it is proposed to *discipline* such a person for "grave misconduct", or if a case is brought against him under the Statement on Rights and Responsibilities, we think that the same protections are warranted as in the case of a teacher.

We appreciate that the same conduct which could give rise to a charge of "grave misconduct" may lead to the conclusion that an administrator is not doing a satisfactory job, so that as a practical matter a choice may exist whether to resort to these procedures. But this does not seem to us objectionable. The important point is that if the Corporation wishes to *characterize* the issue as involving misconduct and therefore disciplinary, these procedures must be used.

A second issue of coverage was discussed by our Committee: whether violations of the second (as well as the third) paragraph of the Statement on Rights and Responsibilities should require resort to these procedures. Our consensus was that only those violations of the second paragraph would appropriately be handled by disciplinary (as contrasted with grievance) procedures which constitute an infringement of a person's freedom of speech or academic freedom. Since these latter are in terms protected by the third paragraph, it seemed to us unnecessary explicitly to refer to the second paragraph of the Statement.

It should be pointed out that the Third Statute speaks only about "removal". Our contemplation, however, is that these procedures should be followed even though what is proposed is a disciplinary sanction short of removal.

Screening Committee. Recommendations 2, 3 and 4 would create a Screening Committee as the first step for processing a

complaint against an officer. The Screening Committee would have two important functions. First, it could operate flexibly and informally as a mediating body and attempt to facilitate the settlement of the case. If this proves impossible, the Screening Committee would serve as a first-line "probable cause" or grand-jury type body, which would determine whether the complaint is sufficiently serious and justified to warrant a formal hearing.

We recommend that questions such as the composition, size, selection, and procedures of the Screening Committee be left to the individual Faculties. At this time we do not see the need for University-wide uniformity on these matters; we do, however, think that the Governing Boards should have an opportunity to pass on the plan adopted by any Faculty for the composition of its committee. And as experience develops among the Faculties, it may be appropriate for the University Committee on Rights and Responsibilities (hereafter "University CRR") to review the question whether University-wide standards or guidelines are appropriate; if these are developed, the necessity for Governing Board approval of particular schemes may disappear.

There was disagreement among Committee members whether it would be appropriate for students ever to serve on screening committees. We have thought it wise to leave this question to the individual Faculties (subject to approval by the Governing Boards), since the answer may turn on the particular role and situation of students in the particular School.

Our recommendations do not specify who may lodge complaints, again leaving to the Faculties the task of working out appropriate "complaint procedures." Our contemplation is that formal disciplinary proceedings looking to the removal of a Faculty member would usually be instituted by a Dean or other responsible authority of the Faculty or University; and the procedures we recommend are not designed to do service as grievance mechanisms. On the other hand, we think it would be a mistake to legislate rigid University-wide rules which completely excluded the possibility of complaints by students, faculty, or others. Clearly one of the functions of the Screening Committee will be to refer complaints which are inappropriate for discipline to the proper channels.

Hearing Committee: Composition. If the Screening Committee so recommends (or in any event if the President so decides), the

matter is referred for hearing to a Hearing Committee. Recommendations 5, 6 and 7 specify the composition of that Committee. The central proposition, accepted by a large majority of our Committee, is that the Hearing Committee should be a University-wide Committee, not restricted to the same Faculty as the Respondent. This seems to that majority essential to secure community-wide confidence in the process and to safeguard both the University and the Respondent against the risks of intra-Faculty provinciality or bias. On the other hand, in the case of the larger Faculties, it seemed appropriate that the majority of the Committee represent the "home" Faculty, and we recommend a normal ratio of 4 "home" to 3 "outside" members.

It was urged on us (in part by representatives of the smaller Faculties) that in a very small Faculty it may be inappropriate to have four colleagues pass on the case; indeed it may be difficult to find as many as four who have not in some other way become involved in the case. We thus recommend that the University CRR develop guidelines under which cases involving the small Faculties (perhaps those with fewer than twenty tenured professors) would be heard by a Hearing Committee of three "home" and four "outside" Faculty members. In any event, each Faculty should be free to have a larger proportion of outsiders on its committee, and Recommendation 6 so provides.

Recommendation 7 is self-explanatory; it represents a judgment that, in cases involving non-tenured Faculty members, having non-tenured Faculty on the Committee would increase confidence in the fairness of the process. (It should be remembered, too, that in some Faculties there are non-tenured members who are not "junior" Faculty, and an attempt should be made to encompass this in creating the "pool" of potential Committee members under Recommendation 8.)

Hearing Committee: Designation. It is important that the process of choosing members of the Hearing Committee not commence after a case has arisen. Our recommendation is that a pool of available members be provided by the election of seven Faculty members from each Faculty. The precise method of election – whether by nomination of the Dean, or other methods – is left to the individual Faculties. We do think it wise, however, to require that each Faculty in some manner *elect* its own representatives for this pool, since such representatives are poten-

tial judges in cases involving members of another Faculty and thus it is important to have University-wide confidence in the designation process.

Although it is not specified, it is the Committee's assumption that in each Faculty those would participate in the voting who are subject to these procedures in that Faculty.

Once a case has arisen, we leave it to the Faculty members of the University CRR, under rules of lot or rotation to be developed by them, to designate the actual committee, subject, of course, to the requirements of Recommendations 5, 6 and 7 as to proportions of "home" vs. "outside" and tenured vs. non-tenured Faculty.

Hearing Committee: Relations With Fellows. The most difficult and controversial question before our Committee proved to be what role, if any, the Fellows should play on the Hearing Committee.

In the preliminary report we issued in April, 1970, we came to the tentative conclusion that the Hearing Committee should be a joint committee of three Faculty members and two Fellows. This was in accordance with the practice at Harvard in the few cases that have arisen in the past two decades. Its premise was that such a joint committee arrangement is less likely to lead to confrontation between Faculty and Governing Boards and can facilitate a fuller appreciation of the case on the part of both Faculty members and Fellows.

Since then it has been strongly urged on our Committee, both by members and others, that we should adopt procedures more like those recommended as a guide in the AAUP's "Statement on Procedural Standards in Faculty Dismissal Proceedings", which call for a Hearing Committee consisting entirely of Faculty members to make recommendations to the University's governing board. Although the AAUP statement itself specifies that its recommendations are not designed to establish a "norm" but "are presented rather as a guide to be used according to the nature and traditions of particular institutions . . .", it was strongly argued that it would be undesirable for Harvard to adopt procedures which differ sharply from the AAUP model. It was pointed out, in this connection, that for Harvard to put representatives of the Governing Boards on its Hearing Committee

would be an unfortunate precedent for other institutions where such participation could seriously undermine Faculty independence in carrying out the hearing and recommending functions. Further, it was argued that it is important in principle that the Faculty take independent responsibility for reaching recommendations on what discipline should be imposed on a fellow Faculty member; and that it would be undesirable to have some Fellows participate with vote in a recommendation which would then come before the Fellows for final decision.

On the basis of prolonged consideration, our Committee concluded that we should attempt to achieve the benefits of some participation by the Fellows at the hearing and recommending stages without compromising the basic principle of independent Faculty responsibility for and power over these stages of the process. Recommendation 11 is the result. The basic principle of Faculty power over this stage of the process is maintained in two ways: only Faculty are voting members of the Committee; and the Faculty members of the Committee retain the power to decide whether or not the Fellows will be invited to participate. On the other hand, we recommend that ordinarily and presumptively two Fellows should be invited to sit on a non-voting basis with the Committee, and that a decision not to do so should be based on a specific decision by the Committee that in the particular case such participation would be undesirable or unnecessary. (We do not contemplate, however, any requirement that the Committee publicize what these reasons were.) We thus expect that there would be Fellow participation on a routine basis, without there being any "issue" made of it, unless some special objection were raised within the Committee.

We recommend, further, that if the Committee determines that the Fellows not participate, other measures be taken to assure that the President and Fellows have a full appreciation of the issues and evidence.

It should be clear that the Fellows are free to decide not to participate in this stage of the process.

Our Committee is persuaded that this recommendation is well within the spirit of the AAUP guidelines mentioned above.

Hearing Committee: Procedures. We have taken it to be our function to recommend what the basic structure and process

should be in Faculty discipline cases; but we have not drafted a detailed code of procedure for the hearings. Rather, we ask the University CRR to design such procedures. A few matters we do specify: Copies of all findings and recommendations must go to the Respondent. (Recommendations 2, 10, 15) (This leaves open for later specification who else should receive copies.) The Committee is free to invite non-voting observers to sit with it — e.g., representatives of a Faculty Council, or a representative of the AAUP. (Recommendation 12) More generally, the procedures must accord with notions of due process: full hearing, fair representation for the Respondent, and an "impartial tribunal." (Recommendation 13) (The reference to an "impartial tribunal" is designed to call to mind that rules must be established on how to deal with the problem of disqualification. Presumably the Respondent should have some opportunity to ask that one or more members of the Hearing Committee be disqualified for bias. On the other hand, it is important that a proceeding not be disrupted by having first to conduct full trials about the biases of each of the judges.) After the Hearing Committee has acted, the Respondent must be given a "reasonable" opportunity to make further arguments to the President and Fellows. (Recommendation 14) It will again be for the University CRR to flesh out this concept more specifically.

We also leave it to the University CRR to work out a sensible and acceptable plan for the "adoption" of the procedures they devise. (Just what this plan is may turn on whether a University Senate is then in existence.)

Final Decision. The recommendations we make fully accept the proposition that in the end the power to decide the case must rest in the President and Fellows. We do, however, recommend that if the Corporation is disposed not to accept the recommendations of the Hearing Committee, a dialogue be instituted between the two groups before a final determination is made. (Recommendation 15)

Questions of Status. Recommendations 16 and 17 are self-explanatory attempts to solve complications which will arise in

cases where a Respondent is both a student and a Faculty member; or where he is a member of more than one Faculty.

Informal and Ad Hoc Procedures. Recommendation 18 seems to us important: it specifies that the existence of these procedures should not preclude resort to other (and perhaps less formal) procedures, devised on an ad hoc basis, if all the interested parties agree and if this seems a sensible and suitable way of dealing with the case. (By "interested parties" we of course mean to include the Respondent as well as the President and Fellows or appropriate Dean.) More particularly, if in a given case it seems appropriate to have a different (for instance, a Departmental) Hearing Committee, and all interested parties agree, there is no reason why this should not be arranged. Our hope, thus, is that our Recommendations will not cut down on desirable flexibility, but rather will furnish a facility to the University in case it is needed.

APPENDIX 1

University-wide Statement on Rights and Responsibilities

The central functions of an academic community are learning, teaching, research and scholarship. By accepting membership in the University, an individual joins a community ideally characterized by free expression, free inquiry, intellectual honesty, respect for the dignity of others, and openness to constructive change. The rights and responsibilities exercised within the community must be compatible with these qualities.

The rights of members of the University are not fundamentally different from those of other members of society. The University, however, has a special autonomy and reasoned dissent plays a particularly vital part in its existence. All members of the University have the right to press for action on matters of concern by any appropriate means. The University must affirm, assure and protect the rights of its members to organize and join political associations, convene and conduct public meetings, publicly demonstrate and picket in orderly fashion, advocate and publicize opinion by print, sign, and voice.

The University places special emphasis, as well, upon certain values which are essential to its nature as an academic community. Among these are freedom of speech and academic freedom, freedom from personal force and violence, and freedom of movement. Interference with any of these freedoms must be regarded as a serious violation of the personal rights upon which the community is based. Furthermore, although the administrative processes and activities of the University cannot be ends in themselves, such functions are vital to the orderly pursuit of the work of all members of the University. Therefore, interference with members of the University in performance of their normal duties and activities must be regarded as unacceptable obstruction of the essential processes of the University. Theft or willful destruction of the property of the University or its members must also be considered an unacceptable violation of the rights of individuals or of the community as a whole.

Moreover, it is the responsibility of all members of the academic community to maintain an atmosphere in which violations of rights are unlikely to occur and to develop processes by which these rights are fully assured. In particular, it is the responsibility of officers of administration and instruction to be alert to the needs of the University community; to give full and fair hearing to reasoned expressions of

grievances; and to respond promptly and in good faith to such expressions and to widely-expressed needs for change. In making decisions which concern the community as a whole or any part of the community, officers are expected to consult with those affected by the decisions. Failures to meet these responsibilities may be profoundly damaging to the life of the University. Therefore, the University community has the right to establish orderly procedures consistent with imperatives of academic freedom to assess the policies and assure the responsibility of those whose decisions affect the life of the University.

No violation of the rights of members of the University, nor any failure to meet responsibilities, should be interpreted as justifying any violation of the rights of members of the University. All members of the community – students and officers alike – should uphold the rights and responsibilities expressed in this Statement if the University is to be characterized by mutual respect and trust.

Interpretation

It is implicit in the language of the Statement on Rights and Responsibilities that intense personal harassment of such a character as to amount to grave disrespect for the dignity of others be regarded as an unacceptable violation of the personal rights on which the University is based.

APPENDIX 2

Excerpt from the Third Statute of the University

(From *History and Government of Harvard University*, December 1968.)

3. **Tenures of Office.** All officers of instruction are subject to removal by the Corporation only for grave misconduct or neglect of duty. All other holders of Corporation appointments (including administrative officers) may be removed from such appointments by the Corporation for grave misconduct or whenever, in its opinion, their duties are not satisfactorily discharged.

Subject to the foregoing, professors and associate professors, and deans and certain other major administrative officers, are appointed without express limitation of time unless otherwise specified, and all other holders of Corporation appointments are appointed for limited terms, or for terms of indefinite duration subject to the right of the Corporation to fix at any time a terminal date, and their connection with the University ceases at the end of their terms as so limited or fixed unless they are reappointed.

. . . (pp. xx-xxi)